IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No.

WM. CARNEGIE EWEN, LEWIS L. CLARKE, M. D. ADAMS and GEORGE E. WILE, as members of a duly constituted Income Bondholders' Protective Committee,

Petitioners,

against

THE PEORIA AND EASTERN RAILWAY COMPANY and DONALD N. GILBERT, HAROLD C. YEAGER and GEORGE A. CAREY, constituting the First Mortgage Bondholders' Protective Committee for The Peoria and Eastern Railway Company's First Consolidated Mortgage 4% Bonds due April 1, 1940,

Respondents.

MOTION FOR DIMINUTION OF RECORD AND FOR THE PRINTING OF A JOINT RECORD.

Counsel for petitioners herein filed their petition for a writ of certiorari to the United States District Court for the Southern District of New York accompanied by a certified transcript of the record of the proceedings in said District Court. Contemporaneously therewith, counsel for the First Mortgage Bondholders' Protective Committee also filed a petition for a writ of certiorari together with a motion for the diminution of the record.

1. The nature of this case and the questions presented have been set forth in the foregoing petition for a writ of certiorari.

2. The said petition for a writ of certiorari does not request consideration by this Court of all the questions passed upon by the District Court. Many of the facts contained in the testimony and exhibits pertinent to the issues raised in the said petition are set forth in the Findings of the District Court. Petitioners now seek to be relieved of printing those parts of the record of the proceedings below which are not necessary to a consideration of the questions presented by the petition for a writ of certiorari herein or which are contained in the uncontested findings of the District Court.

3. It is respectfully submitted that it would serve no useful purpose to have printed portions of the record below which pertain only to issues raised in the District Court but are not raised herein.

4. The District Court made fifty-three (53) Findings, including, among other things, the detailed history and present status of the Peoria and Eastern Railway Company. Petitioners contest only Findings 36, 41, 43-48, inclusive, and 52, which are in reality conclusions of the District Court. Petitioners are requesting review only of that portion of the Plan of Adjustment which deals with the renewal and interpretation of the Operating Agreement between the New York Central Railroad Company and the Peoria and Eastern Railway Company and the prejudice resulting therefrom to the Income Bondholders. Therefore, petitioners deem it necessary to print only such portions of the proceedings and exhibits introduced in the District Court as are pertinent to the foregoing questions.

5. The First Mortgage Bondholders' Protective Committee has set forth in its motion the unsuccessful efforts made with counsel to the Peoria and Eastern Railway Company

to stipulate for the diminution of the record, in which efforts counsel to the petitioners herein participated. The motion made on behalf of the First Mortgage Bondholders' Protective Committee sets forth the documents and exhibits which are necessary to be included in the printed record. The documents and exhibits therein listed include those portions of the record necessary for a consideration of the questions presented in the petition for a writ of certiorari herein.

Counsel for petitioners herein, therefore, joins in the motion made on behalf of the First Mortgage Bondholders' Protective Committee for the diminution of the record and respectfully requests the Court to refer to both motions at the same time.

WHEREFORE, it is prayed that (a) the printing and service of any portions of the record on appeal, except those items as set forth in paragraph 7 of the motion made on behalf of the First Mortgage Bondholders' Protective Committee be dispensed with, and (b) the Income Mortgage Bondholders and the First Mortgage Bondholders be allowed to print one record jointly.

Dated: September 25, 1940.

Respectfully submitted,

CHARLES S. ARONSTAM,
Counsel to Petitioners.